

US EPA ARCHIVE DOCUMENT

DRAFT ADMINISTRATIVE ORDER ON CONSENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

IN THE MATTER OF:)	DOCKET NO. V-W-12-AO-
)	
CITY OF PORTSMOUTH, OHIO)	PROCEEDING UNDER SECTIONS
)	308 AND 309(a) OF
RESPONDENT)	THE CLEAN WATER ACT

STATUTORY AUTHORITY

The following Findings are made and Order on Consent is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (the EPA) by Sections 308 and 309(a) of the Clean Water Act (the Act), 33 U.S.C. §§ 1318 and 1319(a). The Administrator delegated this authority to the Regional Administrator, EPA, Region 5, who then redelegated the authority to the Director of the Water Division, EPA, Region 5.

INTENT OF THE PARTIES

Tinka G. Hyde, Director of the Water Division, on behalf of the Administrator of the United States Environmental Protection Agency, and David Malone, Mayor of the City of Portsmouth, Ohio, on behalf of the City of Portsmouth (Respondent), enter into this Clean Water Act Section 309(a)(3) Compliance Order on Consent to establish a process by which Respondent will develop and implement appropriate measures as it works toward expeditiously achieving compliance with Section 301 of the Clean Water Act, 33 U.S.C. § 1311. In particular, this Compliance Order on Consent sets forth a series of agreed measures and a schedule that the Respondent will implement that will be the first phase of a multiphase process. The measures and schedule that Respondent will implement are set forth in the “Order on Consent” section of this document.

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DEFINITIONS

All terms used, but not defined, in this Order have the meanings provided to them in the Act and EPA regulations promulgated under the Act.

“Combined Sewer Overflow” or “CSO” means any discharge from any outfall identified in Respondent’s National Pollutant Discharge Elimination System (NPDES) permits as a CSO.

“Combined Sewer System” or “CSS” shall mean the portion of Respondent’s Sewer System designed to convey municipal sewage and stormwater runoff through a single-pipe system to Respondent’s wastewater treatment plants.

“Non-System-Caused Release” means any wastewater release that is caused by backups, blockages, flow conditions, or malfunctions in a building lateral, other piping or conveyance system that is not owned or operationally controlled by the Respondent.

“Release” shall mean a Non-System-Caused Release, SSO or Unauthorized CSO.

“Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, diversion, or release of wastewater from or caused by Respondent’s Sanitary Sewer System, including building/property backups, but excluding Non-System-Caused Releases.

“Sanitary Sewer System” means the portion of the Respondent’s Sewer System that is not part of the Combined Sewer System.

“Sewer System” shall mean the wastewater collection and transmission system owned or operated by Respondent designed to collect and convey municipal sewage (domestic, commercial and industrial) to Respondent’s wastewater treatment plants or to a combined sewer overflow structure. “Sewer System” includes both the “Combined Sewer System” and the “Sanitary Sewer System.”

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“Unauthorized Combined Sewer Overflow” or “Unauthorized CSO” shall mean an overflow, spill, diversion, or release of wastewater from or caused by Respondent’s Combined Sewer System at a source not specifically identified in Respondent’s NPDES permits as a CSO, including building/property backups, but excluding Non-System-Caused Releases.

FINDINGS

- A. Respondent is a political subdivision of the State of Ohio, and as such is a “person” for purpose of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- B. Respondent is the owner and operator of two municipal wastewater treatment plants (the Portsmouth WWTP and Sciotoville WWTP) in Portsmouth, Ohio, as well the Sewer System that feeds into those two treatment plants. Respondent discharged treated municipal sewage from outfalls at the two treatment plants, and untreated municipal sewage from outfalls in the Sewer System known as “combined sewer overflow” or “CSO” outfalls. These outfalls constitute “point sources” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- C. The point sources described above in Paragraph B discharge into the Ohio River and some of its tributaries. The Ohio River and its tributaries are “navigable waters” and “waters of the United States” as defined by Section 502(7) of the Act, U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 122.2.
- D. Municipal sewage is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).
- E. On May 16, 2007, the Ohio Environmental Protection Agency issued to Respondent under the authority of the Clean Water Act a National Pollutant Discharge Elimination System (NPDES) permit for the Sciotoville WWTP (Sciotoville Permit) and portions of Respondent’s

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Sewer System, which continues to apply to Respondent. Parts I.B.1 and II.O of the Sciotoville Permit prohibit sanitary sewer overflows (SSOs). On June 25, 2009, the Ohio Environmental Protection Agency issued to Respondent under the authority of the Clean Water Act an NPDES permit for the Portsmouth WWTP (Portsmouth Permit) and portions of Respondent's Sewer System, which continues to apply to Respondent. Part II.F of the Portsmouth Permit prohibits sanitary sewer overflows (SSOs). Part III.2 of the Portsmouth Permit includes General Effluent Limitations applicable to discharge from Respondent's CSO outfalls. Part II.H of the Portsmouth Permit and Part II.B of the Sciotoville Permit require Respondent to "maintain in good working order and operate as efficiently as possible, the "treatment works" and "Sewer System" . . . to prevent untreated or partially treated discharges of wastewater to the waters of the state, surfaces of the ground, basements, homes, buildings, etc."

F. Respondent has repeatedly had SSOs in violation of Part I.B.1 and II.O of the Sciotoville Permit, and in violation of part II.F of the Portsmouth Permit. Respondent has also repeatedly had discharges from its CSO outfalls that violated one or more of the General Effluent Limitations in Part III.2 of the Portsmouth Permit.

G. Each of Respondent's SSOs described in Paragraph F, and discharges from CSO outfalls described in Paragraph F, constitutes a violation of the requirements of Section 301 of the Clean Water Act.

H. Pursuant to Section 308(a)(5)(A) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(5)(A), and having taken into account the seriousness of the violations and Respondent's financial limitations, and considering further that Respondent will undertake the measures set forth in the "Order on Consent" section of this document in order to work toward achieving compliance with the requirements described in Paragraph E, the EPA finds that the schedule set forth in the Order

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on Consent is a reasonable one for the Respondent to work toward achieving compliance with those requirements.

ORDER ON CONSENT

Based on the foregoing Findings and pursuant to the authority of Section 308 and 309(a)(3) of the Act, IT IS HEREBY ORDERED AND AGREED THAT:

Respondent shall take the measures below in accordance with the schedule specified below.

1. Respondent must immediately begin forwarding to EPA, at the following address, a copy of all monthly and annual notifications and documents that Respondent submits to OEPA under Part I.B (CSO Monitoring) and Part II.F (SSO Reporting) of the NPDES Permit No. OPD00013*LD regarding all CSO and SSO occurrences:

Dean Maraldo, Chief
Water Enforcement and Compliance Assurance Branch (WC-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

These notifications and documents must include all information that is required under Parts I.B and II.F of NPDES Permit No. OPD00013*LD. For the Sciotoville WWTP, all the information is required under Parts I.B and II.O of NPDES Permit No. OPC00018*ED.

2. Respondent shall properly manage, operate, and maintain all parts of its Sewer System at all times. This shall include but not be limited to:
 - a. providing adequate capacity to convey base flows and peak flows for all parts of the Sewer System;
 - b. continuing to monitor for the existence of new SSOs and/or Unauthorized CSOs for all parts of the Sewer System;
 - c. taking all feasible steps to stop SSOs and/or Unauthorized CSOs and to mitigate the impact of SSOs and/or Unauthorized CSOs;
 - d. providing public education regarding potential risks associated with exposure to pollutants associated with any SSO or Unauthorized CSO; and

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- e. implementing the nine minimum controls, which are technology-based actions or measures to reduce CSOs and their effects on receiving water quality.
3. Within fourteen (14) calendar days of the effective date of this Order, Respondent shall implement a procedure to report all Releases. This procedure shall include:
- a. E-mail and/or Oral notification to the OEPA (sedo24hournpdes@epa.state.oh.us, or telephone number: 1-800-686-7330) and the City Health Department (telephone number: 740-354-3241), as appropriate, within twenty-four hours of learning of the Release. Verbal notification will include location of the Release, the receiving water, if any, and an estimate of the volume of the Release.
 - b. A written report to the OEPA (with a copy to EPA) within five (5) calendar days of the date Respondent became aware of the Release. The written report shall contain:
 - i. the location of the Release;
 - ii. the receiving water, if any;
 - iii. an estimate of the volume of the Release;
 - iv. a description of the sewer component from which the Release occurred (e.g., manhole);
 - v. the estimated date and time when the Release began and stopped or will be stopped;
 - vi. the cause or suspected cause of the Release;
 - vii. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the Release and, if applicable, a schedule of major milestones for those steps; and
 - viii. steps taken or planned to mitigate the impact(s) of the Release and a schedule of milestones for those steps; and
 - ix. name and title of person reporting the Release.
4. Within sixty (60) calendar days of the effective date of this Order, Respondents shall submit for EPA approval an Overflow Emergency Response Plan (OERP) that identifies measures to mitigate the impacts of any SSOs and/or Unauthorized CSOs and protect public health and the environment. In addition to the reporting and notification program described in Paragraph 3, above, this plan shall include but not be limited to:
- a. a mechanism to ensure that Respondents are made aware of all SSOs and/or Unauthorized CSOs;
 - b. establishing and implementing procedures to ensure responses to SSOs and/or Unauthorized CSOs, including ensuring that reports of SSOs and/or Unauthorized CSOs are immediately dispatched to personnel for investigation and response;
 - c. establishing and implementing procedures to ensure that personnel are aware of and follow the Overflow Emergency Response Plan and are trained; and

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- d. establishing and implementing emergency operations procedures.
- 5. EPA may approve in writing the OERP or, if EPA determines that Respondent's proposed OERP is unacceptable, EPA will notify Respondent and provide written, corrective comments as appropriate. Respondent must revise the proposed OERP in response to EPA's corrective comments, and resubmit the proposed OERP to EPA for written approval within 45 calendar days after receipt thereof. Upon written approval by EPA of the OERP, Respondent shall implement the approved OERP.
- 6. Within 180 calendar days of receipt of this Order, Respondent must prepare a Sewer Systems Management, Operation and Maintenance (MOM) Program for all parts of its Sewer System; and submit a written description of its MOM program to EPA for approval. The MOM program will demonstrate how Portsmouth will provide proper management, operation and maintenance of the gravity sewer lines, force mains, pump stations, and other equipment associated with its Sewer System; minimize Sewer System failures, such as wastewater backups into buildings, and discharges from the Sewer System; maximize flow to the WWTPs; and provide maximum feasible treatment to all sewer flows. The Program shall be in accordance with EPA's January 2005 "Guide for Evaluating Capacity, Management, Operation and Maintenance Programs" (EPA 305-B-05-002), and EPA's May 1995 "Combined Sewer Overflows Guidance for Nine Minimum Controls" (EPA 832-B-95-003). Respondents must implement the MOM program beginning within 30 calendar days after approval by EPA. The OERP shall be incorporated into the MOM program. The MOM shall include, but not be limited to, the following:
 - a. A description of Portsmouth's existing Sewer Systems maintenance program, including a detailed map of the Sewer System;
 - b. A description of the maintenance level of effort, by activity, to be carried out, the frequency of inspection and line cleaning activities for each Sewer Basin, and a description of how maintenance activities focus on the areas of the Sewer Systems most in need of attention;
 - c. A plan and schedule (not to exceed 5 years from the beginning of implementation of the MOM program) for the implementation of an initial system inventory and condition assessment;
 - d. Provisions for cleaning and televising, within 5 years of the effective date of this Order, all Sewer segments less than 18 inches in diameter that have been in service for more than 20 years;
 - e. Plans and schedules for the routine inspection of the Sewer Systems in accordance with the following minimum requirements:

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- i. routine inspection of all manholes, including all manholes that are entered for purposes of cleaning, inspection, or other routine maintenance activities;
 - ii. closed circuit television (CCTV) inspection sewer segments not previously inspected by CCTV within 30 days after the occurrence of an SSO or Unauthorized CSO in a location not already scheduled for repairs or improvements under this Order;
 - iii. routine inspection of all Pump Stations;
 - iv. routine inspection of structures critical to the operation of the Sewer System, including regulators, overflow weirs, tide gates, catch basins, etc.
 - f. Provisions for evaluating and removing sources of Rainfall-derived Infiltration and Inflow into Sewer Systems;
 - g. Procedures for ensuring that new sewer segments and connections are properly designed and constructed (including testing of new sewer segments installations) and procedures for ensuring that rehabilitation projects are properly designed and constructed to prevent SSOs, Unauthorized CSOs, and new connections of storm water inflow;
 - h. Procedures for maintaining all Pump Stations in good working order, including but not limited to:
 - i. routine cleaning of pump station wet wells;
 - ii. maintaining backup power capability;
 - i. A description of the capabilities of Portsmouth's record keeping and/or data management system and the degree to which it is currently used to manage Sewer Systems maintenance data, including sample outputs such as routine work schedule summaries and work orders;
 - j. A description of current and proposed Sewer Systems maintenance staffing levels (both planned and actual), organizational structure, equipment and other resources dedicated to Sewer Systems maintenance;
 - k. A description of Portsmouth's current and proposed spare parts inventory, and how critical spare parts were identified;
 - l. Provisions for insuring that the maximum flow is transported to the WWTPs prior to discharging from any CSOs and that CSO discharges are minimized.
7. EPA may approve in writing the MOM Program or, if EPA determines that Respondent's proposed MOM Program is unacceptable, EPA will notify Respondent and provide written, corrective comments as appropriate. Respondent must revise the proposed MOM Program in response to EPA's corrective comments, and resubmit the proposed MOM Program to EPA for written approval within 45 calendar days after receipt thereof. Upon

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written approval by EPA of the MOM Program, Respondent shall implement the approved MOM Program.

8. Respondent must comply with the following schedule for construction, rehabilitation or replacement projects to eliminate the Munn's Run SSOs:

Activity	Date
Execute Construction Contract for North Moreland Sewer Lining Project	Completed
Complete Construction of North Moreland Sewer Lining Project	07/15/2013
Solicit bids for Construction of North Moreland Manhole Rehabilitation Project and submit a copy of any bid solicitation documents to EPA and OEPA	05/01/2013
Complete Construction of North Moreland Manhole Rehabilitation project	12/31/2013

9. Upon full construction of the Munn's Run SSO projects, Respondents must conduct one year of monitoring of the Munn's Run Pumping Station. If SSOs have continued to occur, Respondents must comply with the following schedule to eliminate the remaining SSOs:

Activity	Date
Submit Proposed Amended Schedule to EPA that Incorporates Additional Proposed Steps/Projects to Eliminate the Remaining SSOs	No later than 60 days after conclusion of the monitoring period
Begin Implementation of the Amended Schedule to Eliminate the Remaining SSOs	No later than 60 days after EPA's written approval of the Amended Schedule

10. EPA may approve in writing the proposed amended schedule submitted under Paragraph 9 or, if EPA determines that Respondent's proposed amended schedule submitted under Paragraph 9 is unacceptable, EPA will notify Respondent and provide written, corrective comments as appropriate. Respondent must revise the amended schedule, in response to EPA's corrective comments, and resubmit the revised amended schedule to EPA for written approval within 45 calendar days after receipt thereof. Upon written approval by EPA, Respondent shall implement the approved amended schedule.
11. Respondent must comply with the following schedule for Grandview-Upper Lawson Run Projects:

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Activity	Date
Submit 2013 Nomination Forms for Water Pollution Control Loan Fund (WPCLF) to OEPA DEFA for Grandview Area and Lawson Run projects. These projects include Planning, Design, and Construction for 25th and Coles Street Retention Basin Project and 2300 Block of Grandview Avenue Storage Project.	Completed
<u>Downspout Disconnection Program</u> : Issue letters to private property owners identified in 2012 engineering study requiring immediate disconnection of downspouts from sanitary Sewer System.	Completed
Complete verification of downspout disconnection status of 47 downspouts.	4/1/13
Issue certified letters to property owners who have not completed downspout disconnection indicating enforcement action if not completed within 60 days.	6/1/13
Provide written completion report to EPA and the OEPA within 30 days of completion of the project.	
<u>25th and Coles Street Retention Basin Project</u> : Submit offer to acquire property to construct 25th and Coles Street Retention Basin Project	4/1/13
Execute engineering agreement to Design 25th and Coles Street Retention Basin Project and submit a copy of such agreement to EPA and OEPA	6/1/13
Advertise for bids for construction of 25th and Coles Street Retention Basin Project and submit a copy of such advertisement to EPA and OEPA	10/1/13
Complete construction of 25th and Coles Street Retention Basin Project	10/1/14
<u>2300 Block of Grandview Project</u> : Execute engineering agreement for Planning of 2300 Block of Grandview Avenue Storage Projects and submit a copy of such agreement to EPA and OEPA	Completed
Execute engineering agreement for design of 2300 Block of Grandview Avenue Storage Projects and submit a copy of such agreement to EPA and OEPA	6/1/13
Submit application for Permit to Install to Ohio EPA for 2300 Block of Grandview Avenue Storage Project and submit a copy of such application to EPA	10/1/13
Advertise for bids for construction of 2300 Block of Grandview Avenue Storage Project and submit a copy of such advertisement to EPA and OEPA	10/1/13
Execute construction contract for 2300 Block of Grandview Avenue Storage Project and submit a copy of such contract to EPA and OEPA	12/31/13

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Complete construction of 2300 Block of Grandview Avenue Storage Project	3/31/15
Perform post-construction monitoring to determine the effectiveness of Grandview/Upper Lawson Run area projects in eliminating Releases. Performance shall be evaluated during a demonstration period of two years, and will include: 1) analysis of release data generated through implementation of the approved OERP; 2) measurement of the effectiveness at eliminating releases during severe storm events; and 3) demonstration of a decrease in surface flooding that may contribute to rainfall-derived infiltration and inflow into the sewer system. The City will submit a report after all three effectiveness criteria have been evaluated. The report will include recommendations for further actions if needed.	Upon completion of demonstration period.

12. Respondent must comply with the following schedule for the Lawson Run Projects:

Activity	Date
Conduct visual inspection of Lawson Run Sewer.	04/01/2013
Execute Engineering Agreement for Lawson Run Sewer Separation Feasibility Study and submit a copy of such agreement to EPA and OEPA	6/1/13
Advertise for bids for TV Assessment of large diameter and tunnel sewers and submit a copy of such advertisement to EPA and OEPA	8/1/13
Complete TV of Lawson Run Connections	12/31/13
Submit Part I of Feasibility Report to EPA and OEPA - condition assessment of Lawson Run and existing connections, and proposed approach to separation.	2/28/14
Submit Part II of Feasibility Report to EPA and OEPA - costing of traditional gravity separation projects and alternative separation approaches.	5/31/14
Submit Part III of Feasibility Report to EPA and OEPA - recommended approach to potential Lawson Run projects including necessary headworks/influent modifications.	8/31/14
Address EPA comments and Submit Final Feasibility Report	Within 30 days of receipt of EPA Comments

13. Portsmouth shall submit bimonthly progress reports on the progress it has made on implementing the activities and capital improvement projects discussed in paragraphs 8-12. For each project, the following information should be provided:

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- Name of the activity and/or project and activity/project description
- Section of the ACO under which the activity/project is initiated
- Start date of the activity/project
- Milestones for each activity/project, description of the milestone and percent project completed
- Expected outcome of the activity/project
- Technical design drawings of the project (required to be submitted only once for each project)
- Basis of cost estimation and any assumptions for deriving project cost, engineering calculations
- Project cost, proposed and actual, and copies of change work orders for the project
- Personnel responsible for managing the project, titles
- Deviation from the project, rationale for the deviation, what will be the project outcome
- Project end date

The bimonthly progress report shall also include a Gantt chart illustrating projected start, interim and finish dates for all of the projects discussed in paragraphs 8-12. For each monthly progress report, the Gantt chart shall be updated to reflect the projected start, interim and finish dates as they exist as of the date of the bimonthly progress report. To the extent that any Gantt chart is different from the Gantt chart that had been provided in the previous bimonthly report, Portsmouth shall provide an explanation for why the Gantt chart has been changed.

14. Commencing immediately, Respondent will prepare annual reports for submission to EPA. The annual report will convey the following information:
 - a. Respondents' progress on completing the projects described in the original implementation schedule, or the amended schedule, whichever is in effect, for Sewer System rehabilitation/replacement work to eliminate remaining SSOs and Unauthorized CSOs, including identification of projects completed in the previous calendar year, status of projects underway as of the end of the calendar year, status of projects scheduled for implementation during the new calendar year, and identification of any anticipated delay in the schedule and the reasons therefore, and all steps that have been taken, or will be taken, to minimize or eliminate the anticipated delay;
 - b. Respondent's progress in implementing its MOM program, and
 - c. An inventory of all SSOs and Unauthorized CSOs occurring in the previous calendar year, identifying the dates, sources, estimated volumes, receiving waters and principal pollutants contained in the discharges, accompanied by a copy of a press release that Respondent must issue to inform the public of the availability of the inventory on Respondent's principal webpage.

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- d. The Respondent must submit the Discharge Monitoring Reports and CSO reports provided to OEPA to EPA.

The annual reports must be postmarked by January 31 of the year following the year of acceptance of this agreement, and submitted to the Water Enforcement and Compliance Branch Chief at the address provided in Paragraph 1, above.

GENERAL PROVISIONS

- A. Issuance of this Order shall not be deemed an election by the EPA to forego any civil or criminal administrative or judicial action to seek civil penalties, fines, or other appropriate relief (including injunctive relief) under the Act for the violations set forth in the Findings or future violations that Respondent might commit.
- B. Issuance of this Order does not affect the EPA's authority to seek additional information under Section 308 of the Act, 33 U.S.C. § 1318, or otherwise affect the EPA's ability to enforce the Permit or enforce or implement the Clean Water Act.
- C. In evaluating whether to initiate any future civil or administrative enforcement action or whether to seek additional information under Section 308 of the Act, EPA may (but is not required to) consider the extent to which Respondent has complied with the terms of this Order; including, but not limited to, the extent to which Respondent has submitted an approvable OERP, MOM Program or Amended Munn's Run schedule, and/or the extent to which Respondent has incorporated EPA comments on any OERP, MOM Program and Amended Munn's Run Schedule proposed by Respondent.
- D. Respondent agrees that the EPA has jurisdiction to issue this Order.
- E. Respondent neither admits nor denies liability for the violations identified in Paragraph G above, but waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of

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fact or law set forth in the Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

- F. Failure to comply with the terms of this Order on Consent may result in Respondent's liability for significant statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA in a district court of competent jurisdiction, the district court may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent has violated the Act as described above and failed to comply with the term of this Order. In determining the amount of a any penalty the court will consider the seriousness of Respondent's violations, Respondent's economic benefit (if any) resulting from the violations, any history Respondent may have of such violations, any good faith efforts Respondent has made to comply with the applicable requirements, the economic impact the penalty may have upon the Respondent, and such other matters as justice may require..
- G. Respondent's compliance with this Order on Consent is not conditioned on the receipt of any federal, state or local funds. Failure to comply is not excused by lack of federal or state grant funds, or by the processing of any applications for the same.
- H. Respondent reserves the right to contest liability in any subsequent action filed by the EPA to seek penalties for violations of this Order on Consent, and reserves the right to contest liability in any subsequent action filed by the EPA for any violations alleged in the Findings, above.
- I. This Order on Consent shall become effective upon the signature of the parties.

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David Malone
Mayor, City of Portsmouth

Date: _____

Tinka G. Hyde
Director, Water Division

Date: _____